

STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE COURT OF APPEALS)

PATRICIA MYRA CORLEY,

Plaintiff-Appellee,
v

DETROIT BOARD OF EDUCATION,
JOSEPH SMITH, and BARBARA FINCH,
Jointly and Severally,

Defendants-Appellants.

S.C. No.

C.A. No. 218528 *Open 5/15/01*

L.C. No. 97-704241-CZ

*Wayne
W. Baxter*

NOTICE OF HEARING

APPLICATION FOR LEAVE TO APPEAL

AFFIDAVIT OF CHRISTINE D. OLDANI

CERTIFICATE OF SERVICE

PLUNKETT & COONEY, P.C.

By: CHRISTINE D. OLDANI
KENNETH L. LEWIS
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FILED

JUL 26 2001

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE COURT OF APPEALS)

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DETROIT BOARD OF EDUCATION,
JOSEPH SMITH, and BARBARA FINCH,
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Defendants-Appellants.

NOTICE OF HEARING

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that the application for leave to appeal will be brought on for hearing in the Michigan Supreme Court on Tuesday, the 21st day of August, 2001.

Pursuant to MCR 7.302(A)(2), please take notice that the application for leave to appeal will not be argued orally unless previously so ordered in advance by the Court.

PLUNKETT & COONEY, P.C.

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DATED: July 25, 2001

STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE COURT OF APPEALS)

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**STATEMENT IDENTIFYING COMPLAINED-OF ORDER AND OPINION AND
SETTING FORTH REQUESTED RELIEF**

Pursuant to MCR 7.302(A)(1)(a), defendants-appellants Detroit Board of Education, Joseph Smith, and Barbara Finch, all of whom shall hereinafter collectively be referred to as defendants, state that the within application for leave to appeal seeks the Court's review of the court of appeals' July 5, 2001 order denying defendants' motion for rehearing, which order left intact the court of appeals' May 15, 2001 published opinion affirming in part and reversing in part the Wayne County Circuit Court's orders granting defendants' motions for summary disposition. Defendants seek a peremptory reversal of the court of appeals' ruling reversing the trial court's grant of summary disposition to defendants and, failing that, a grant of their application for leave to appeal.

Court of Appeals, State of Michigan

ORDER

Patricia Myra Corley v Detroit Board of Education

Docket No. 218528

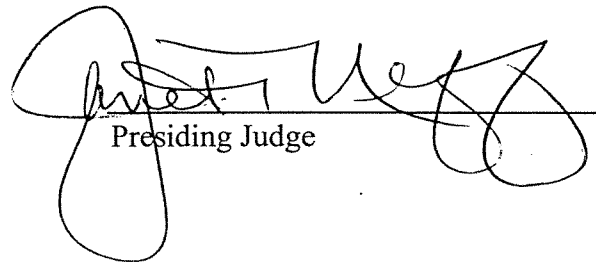
LC No. 97-704241-CZ

Janet T. Neff
Presiding Judge

Donald E. Holbrook, Jr.

Kathleen Jansen
Judges

The Court orders that the motion for rehearing is DENIED.

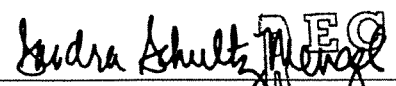

Presiding Judge



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 05 2001

Date


Chief Clerk

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STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA MYRA CORLEY,

Plaintiff-Appellant,

v

DETROIT BOARD OF EDUCATION, JOSEPH
SMITH, and BARBARA FINCH,

Defendants-Appellees.

FOR PUBLICATION

May 15, 2001

9:05 a.m.

No. 218528

Wayne Circuit Court

LC No. 97-704241-CZ

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

NEFF, P.J.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants on her claims of sex discrimination, breach of contract, and intentional infliction of emotional distress, following the termination of her adult education job with defendant Detroit Board of Education. We affirm in part, reverse in part, and remand.

I

This appeal presents an issue of first impression regarding whether alleged adverse employment action against an employee on the basis of her former intimate relationship with her supervisor presents a cognizable claim of sex discrimination under the CRA. We conclude that it does, and therefore summary disposition of plaintiff's sexual harassment claim in favor of defendants was improper. However, we affirm the trial court's grant of summary disposition on plaintiff's other claims of sex discrimination and her claims of breach of contract and intentional infliction of emotional distress.

II

Plaintiff was employed by defendant Detroit Board of Education as a full-time counselor at Cass Technical High School and, following a divorce in 1991, she took an additional part-time position at Golightly adult education program. An intimate romantic relationship developed between plaintiff and her supervisor at Golightly, defendant Smith, which lasted nearly four years, but ended in 1995, when Smith became involved with defendant Finch, another Golightly administrator, whom he married in the spring of 1996. Because of plaintiff's past intimate relationship with Smith, problems arose at Golightly between plaintiff, Smith, and Finch.

Following the 1995-1996 school year, Smith informed plaintiff that her counseling job at Golightly would not be continued.

Following the termination of her adult education position, plaintiff filed a lawsuit alleging discrimination under the Elliot-Larsen Civil Rights Act, (CRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, breach of contract and intentional infliction of emotional distress. In her claims, plaintiff alleged that she was subjected to a hostile work environment, sexual harassment, disparate treatment, and unlawful termination because of her sex and her prior relationship with defendant Smith. The trial court initially granted summary disposition on all claims except the breach of contract claim, against the Board and Smith. The court subsequently granted summary disposition of plaintiff's contract claim, concluding that it was barred by the applicable Collective Bargaining Agreement (CBA).

III

This Court reviews a trial court's grant of a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). The trial court granted summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual basis underlying a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). We consider all relevant documentary evidence in a light most favorable to the nonmoving party. *Id.*; *Ardt, supra*. Summary disposition under MCR 2.116(C)(10) is proper only when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

Summary disposition under MCR 2.116(C)(8) is proper when "the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). In reviewing a motion under MCR 2.116(C)(8), this Court does not act as a factfinder, but instead accepts all well-pleaded facts as true. *Radtke, supra* at 373. Statutory construction is also a question of law, requiring de novo review. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995).

A

Under Michigan law, freedom from discrimination in employment because of sex is a civil right. MCL 37.2102; MSA 3.548(102); *Chambers, v Trettco, Inc*, 463 Mich 297, 309; 614 NW2d 910 (2000). Section 202 of the CRA provides that an employer may not "discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of ... sex" MCL 37.2202; MSA 3.548(202). Discrimination because of sex includes sexual harassment. MCL 37.2103(i); MSA 3.548(103)(i); *Chambers, supra* at 309. The CRA defines sexual harassment to include

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:

* * *

(ii) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment

(iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, ... or creating an intimidating, hostile, or offensive employment ... environment. [MCL 37.2103(i)(ii), (iii); MSA 3.548(103)(i)(ii), (iii).]

To establish a claim of harassment under subsection (ii), generally termed "quid pro quo" harassment, an employee must show

(1) that she was subject to any of the types of unwelcome sexual conduct or communication described in the statute, and (2) that her employer or the employer's agent used her submission to or rejection of the proscribed conduct as a factor in a decision affecting her employment. [*Chambers, supra* at 310-311, quoting *Champion v Nation Wide Security, Inc*, 450 Mich 702, 708-709, 545 NW2d 596 (1996).]

To establish a harassment claim under subsection (iii), referred to as "hostile work environment" harassment, an employee must show that

- (1) the employee belonged to a protected group;
- (2) the employee was subjected to communication or conduct on the basis of sex;
- (3) the employee was subjected to unwelcome sexual conduct or communication;
- (4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and
- (5) respondeat superior. [*Chambers, supra* at 310-311, quoting *Radtko, supra* at 382-383.]

In her complaint, plaintiff set forth claims of both "sexual harassment," (presumably quid pro quo sexual harassment) and "hostile work environment." On the evidence presented, we conclude that plaintiff established sufficient facts to survive a motion for summary disposition under either theory.

B

The threshold issue for a claim of quid pro quo sexual harassment is that submission to or rejection of the proscribed conduct was "a factor in decisions affecting [the plaintiff's] employment." MCL 37.2103(i)(ii); MSA 3.548(103)(i)(ii); *Chambers, supra* at 317. Because it is undisputed that plaintiff's employment at Golightly was terminated, and because plaintiff averred various actions by Smith and Finch affecting plaintiff's job at Golightly, plaintiff has established a genuine issue concerning whether the alleged adverse actions were factors in

decisions affecting her employment. Thus, we first consider whether plaintiff established a claim of quid pro quo sexual harassment under subsection (ii).

Plaintiff argues that defendants' adverse actions against her constituted sexual harassment¹ because they were rooted in Smith's and Finch's reaction to a past consensual intimate relationship between plaintiff and Smith, who was plaintiff's supervisor and a department head at Golightly. In her complaint, plaintiff averred that after their break-up, Smith confronted her at work with thinly veiled threats either expressly or implicitly warning her that she would lose her job unless she promised to do nothing to adversely affect his subsequent relationship with Finch. Further, Smith repeatedly raised the issue in the form of threats throughout the school year, despite plaintiff's reassurances that she had no intention of interfering with Smith's relationship with Finch.

Plaintiff, an evening school counselor, further averred that defendant Finch, a day-school administrator at Golightly, was aware of the former relationship between Smith and plaintiff, and that Finch, through conduct and indirect communications, exhibited hostility toward plaintiff and made her displeasure with plaintiff's regular presence at the school known to plaintiff. Plaintiff testified during deposition that Finch interceded in the direction of plaintiff's employment, through Smith, to impose work conditions specific to plaintiff, such as assigning her a particular desk in the counseling center within Finch's area of responsibility, thus preventing plaintiff from working away from Finch. No one else was given an assigned seat.

In *Barrett v Kirkland Community College*, ___ Mich App ___, ___ NW2d ___ (Docket No. 217040, issued 4/10/01), slip op pp 9-10, this Court recently held that the CRA does not "prohibit conduct based on romantic jealousy," and, therefore no claim of sex discrimination could be made where the male plaintiff alleged that his male supervisor subjected him to adverse employment actions because they were both pursuing a romance with the same female employee. However, *Barrett* can be distinguished from this case in that the defendants' conduct in *Barrett* did not emanate from a prior sexual/romantic relationship between the plaintiff and his supervisor, and there was no claim or evidence that the plaintiff was required to submit to sexual harassment as a condition of employment. *Id.* at 7, 9.

Plaintiff's allegations that defendants targeted her for persistent and hostile communications and other adverse actions because they disliked her continued presence in the workplace as Smith's former paramour may reasonably be considered allegations of conduct or communication "of a sexual nature," MCL 37.2103(i); MSA 3.548(103)(i), in that they emanated from the romantic/sexual relationship between plaintiff and Smith. Similarly, plaintiff's allegation that she suffered adverse employment actions and was discharged for reasons stemming from her status as Smith's former girlfriend may reasonably be considered an

¹ Plaintiff also characterizes these actions as discrimination on the basis of marital status, contending that her status as a single mother was a factor in her harassment because Smith knew that she could not afford to lose her job. However, plaintiff presents only cursory argument on this claim, and we find plaintiff's argument too tenuous as a basis for relief.

allegation that plaintiff was terminated because of her "submission" to Smith's prior romantic/sexual advances.

The Civil Rights Act is a "remedial statute" of "manifest breadth and comprehensive nature." *Eide v Kelsey-Hayes Co*, 431 Mich 26, 36; 427 NW2d 488 (1988). "[R]emedial statutes are to be liberally construed to suppress the evil and advance the remedy." *Id.* at 34. The provisions of the Civil Rights Act covering sexual harassment in the workplace should be read to broadly protect an employee against adverse employment action taken by an employer acting in furtherance of personal animosity toward the employee as the result of the employer's sexual advances. Under the circumstances of this case, we conclude that plaintiff has presented a genuine issue of fact concerning whether she was subjected to quid pro quo sexual harassment.

C

With regard to plaintiff's claim of a hostile work environment, we conclude on the same facts that plaintiff presented evidence to survive a motion for summary disposition. Our reasoning with regard to quid pro quo harassment applies similarly to establish that plaintiff belonged to a protected group, was subjected to communication or conduct on the basis of sex, and that the conduct or communication was unwelcome. See *Radtke, supra* at 383-385 (analyzing the first three elements of a hostile work environment claim). Viewing the evidence in a light most favorable to plaintiff, as a female, former girlfriend of her supervisor, plaintiff was the object of unwelcome sexual conduct or communication, in the form of remarks and offensive actions by Smith and Finch. She informed Smith that she considered his actions to be harassment and told him to cease threatening her; plaintiff also expressed her resentment to Finch for complaining about plaintiff.

With respect to the fourth element of a hostile environment claim, plaintiff presented evidence to create a genuine issue of fact concerning whether the conduct or communication substantially interfered with her employment or created an intimidating, hostile, or offensive work environment. "[W]hether a hostile work environment existed shall be determined by whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment." *Radtke, supra* at 394. Plaintiff was subjected to threats, numerous offensive remarks, adverse working conditions, and ultimately replaced as a counselor because of her past relationship with her supervisor.

Finally, plaintiff presented evidence to establish the element of respondeat superior. Plaintiff testified during her deposition that Smith telephoned plaintiff at Cass Technical on the day she was to return to work at Golightly and told her that she was being replaced by another counselor, although her counterpart Ms. Watts, was not being replaced. Plaintiff received no other notice that her position at Golightly, which she had had for the past five years, was terminated. On that same day, plaintiff contacted Dr. Peoples, the Golightly adult education director, concerning her termination and whether there was any problem with her work, but plaintiff was not thereafter assigned to a counseling position.

Mindful of the standards by which a court must view the evidence in a motion for summary disposition, accepting all well-pleaded facts as true, MCR 2.116(C)(8), and viewing the evidence in a light most favorable to the nonmoving party, MCR 2.116(C)(10), we conclude that summary disposition of plaintiff's sexual harassment claims was improper. We find no error in the summary dismissal of plaintiff's other claims of sex discrimination. We conclude that plaintiff failed to present sufficient facts to support her theories of intentional sex discrimination or disparate treatment. See *Lytle v Malady (On Rehearing)*, 458 Mich 153, 181, n 31; 579 NW2d 906 (1998) (disparate treatment requires evidence that a female plaintiff was treated differently than a similarly situated male employee); *Schultes v Naylor*, 195 Mich App 640, 646; 491 NW2d 240 (1992) (intentional discrimination requires a showing that the defendant was predisposed to discriminate against persons in the affected class).

IV

We also find no error in the trial court's dismissal of plaintiff's claims of intentional infliction of emotional distress and breach of contract. We conclude that reasonable minds could not differ that the complained-of conduct was not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community." *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). We also conclude that the trial court properly dismissed plaintiff's implied contract claim on the ground that it concerned subject matter expressly covered by her union contract. *Wallace v Recorder's Court*, 207 Mich App 443, 446-447; 525 NW2d 481 (1994).

Affirmed in part and reversed in part. Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Donald E. Holbrook
/s/ Kathleen Jansen

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PATRICIA MYRA CORLEY,

Plaintiff,

vs

DETROIT BOARD OF
EDUCATION, JOSEPH SMITH,
Jointly and Severally,

Defendants.

97-704241-CZ 2/11/97

JDG: WENDY BAXTER

CORLEY PATRICIA MYRA

vs

DETROIT BD OF EDUCATION

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ORDER GRANTING DEFENDANTS' SECOND DISPOSITIVE MOTION

At a session of said Court,
held in the City of **Detroit** ,
County of **Wayne** , State of
Michigan on _____

MAR 09 1999

PRESENT: HONORABLE _____

Circuit Court Judge

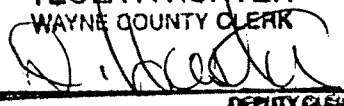
This matter having come before the Court, and the Court being fully
advised in the premises on February 5, 1999;

IT IS HEREBY ORDERED that defendants' second dispositive motion is granted on the grounds that the contract claim is barred by the Collective Bargaining Agreement, no genuine issue of material fact exists and Wallace v Recorders Court, 207 Mich App. 443 (1994) is the controlling case law.

IT IS SO ORDERED.

HON. WENDY M. BAXTER

CIRCUIT COURT JUDGE

A TRUE COPY
TEOLA P. HUNTER
WAYNE COUNTY CLERK
BY  **DEPUTY CLERK**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PATRICIA MYRA CORLEY,

Plaintiff,

V

DETROIT BOARD OF EDUCATION,
JOSEPH SMITH
And BARBARA FINCH,
Jointly and Severally,

Defendants.

97-704241 CZ 2/11/97

JDG: WENDY BAXTER

CORLEY PATRICIA MYRA

VS

DETROIT BD OF EDUCATION

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ORDER GRANTING PARTIAL
SUMMARY DISPOSITION TO DEFENDANTS

At a session of said Court, held in the City of
Detroit, County of Wayne, State of Michigan

PRESENT: HONORABLE

HON. WENDY M. BAXTER

CIRCUIT COURT JUDGE

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MAR 09 1999

This matter having come before the Court pursuant to Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), the Court having heard oral argument of counsel and being advised in the premises on December 4, 1998,

IT IS HEREBY ORDERED, that Defendants' Motion for Summary Disposition, pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), shall be and the same hereby is granted as to all claims against Defendant, Barbara Finch.

IT IS FURTHER ORDERED, that Defendants' Motion for Summary Disposition, pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), shall be and the same hereby is granted as to Count I, Count II, Count III, Count IV and Count VI of Plaintiff's Complaint against Defendants, Detroit Board of Education and Joseph Smith.

IT IS FURTHER ORDERED, that the only remaining claim in this action is Count V -- Breach of Contract, against Defendants, Detroit Board of Education and Joseph Smith.

IT IS SO ORDERED.

07911.80813.478805

HON. WENDY M. BAUER
M. GAXTER

CIRCUIT COURT JUDGE

A TRUE COPY
TEOLA P. HUNTER
WAYNE COUNTY CLERK
DEPUTY CLERK

QUESTION PRESENTED FOR REVIEW

PLAINTIFF WAS ENGAGED IN A CONSENSUAL ROMANTIC/SEXUAL RELATIONSHIP WITH HER WORKPLACE SUPERVISOR, WHICH RELATIONSHIP CONCLUDED WHEN THE SUPERVISOR BECAME ROMANTICALLY INVOLVED WITH AND MARRIED ANOTHER EMPLOYEE. MICHIGAN'S CIVIL RIGHTS ACT RECOGNIZES THAT IN EMPLOYMENT FREEDOM FROM DISCRIMINATION BECAUSE OF SEX IS A CIVIL RIGHT, BUT THE ACT DOES NOT BAR ALL CONDUCT THAT IS IN ANY WAY REMOTELY RELATED TO SEX. DOES THE COURT PROPERLY GRANT LEAVE TO APPEAL TO CONSIDER WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT PLAINTIFF COULD PURSUE CLAIMS FOR SEXUAL HARASSMENT BASED ON ALLEGED CONDUCT AND COMMUNICATION FOLLOWING HER FAILED ROMANTIC RELATIONSHIP.

Defendants-Appellants Detroit Board of Education, Joseph Smith, and Barbara Finch say "YES".

Plaintiff-Appellee says "NO".

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendants seek leave to appeal the court of appeals' July 5, 2001 order denying defendants' motion for rehearing. With the entry of that order, the court of appeals left standing its May 15, 2001 published opinion reversing in part and affirming in part the trial court's summary disposition rulings. Defendants state that their application for leave to appeal easily satisfies the showing required by MCR 7.302(B) sufficient to warrant the Court's full review of the court of appeals unfavorable rulings. The following recitation sets forth the factual background upon which the Court considers defendants' request for relief.

A. Background Facts

Patricia Myra Corley, a single parent, works for the Detroit Board of Education as a counselor assigned to Cass Tech High School (complaint, ¶ 9). Plaintiff's position at Cass Tech is a full-time one (*id*). Previously, plaintiff also worked for the Detroit Board of Education on a part-time basis (complaint, ¶ 1). Specifically, she served as a counselor with the Detroit Board of Education adult education program and was assigned to Golightly School (*id*). Plaintiff accepted her part-time position in August, 1991 (complaint, ¶ 10).¹

¹ The Detroit Public Schools (DPS) has two types of employees: (1) primary employees for K-12 education and (2) adult education and additional work assignment employees. Primary employees have employment contracts with DPS. On the other hand, because of fluctuation in student population, part-time employees, also known as additional work assignment employees, receive only temporary jobs that terminate at the end of each school term. Additional work assignments are given on an as-needed basis.

Joseph Smith was plaintiff's supervisor at Golightly School (*id*). In November, 1991, plaintiff accepted an invitation from Joseph Smith to accompany him on a date (complaint, ¶ 12). A romantic relationship eventually developed between plaintiff and Mr. Smith; the two dated for a period of three and one-half to four years (complaint, ¶ 12). During that time, plaintiff and Joseph Smith expressly agreed to take such steps as were necessary to ensure that their personal relationship did not interfere with their professional relationship or impact upon their respective responsibilities at Golightly (*id*).

During early 1995, Joseph Smith began seeing Barbara Finch, another administrator at Golightly School (complaint, ¶ 14). A romance developed between the two of them (*id*). In approximately March, 1995, plaintiff's relationship with Joseph Smith ended (complaint, ¶ 15). Plaintiff continued working at Golightly for the balance of the school year (complaint, ¶ 15). She also returned to her employment at Golightly in the Fall of 1995 (complaint, ¶ 16).

Joseph Smith and Barbara Finch became engaged. They married in the Spring of 1996 (complaint, ¶ 18). All the while, plaintiff continued her part-time work at Golightly (complaint, ¶ 19).

At the conclusion of the 1995-1996 school year, plaintiff's part-time employment at Golightly ended (complaint, ¶ 20). Plaintiff attributed the termination of her employment to Joseph Smith's discomfort with plaintiff's continued presence at Golightly, with Smith fearing that plaintiff's presence would affect his relationship with his wife (complaint, ¶ 21). Further, plaintiff believed that Barbara Finch exercised

influence upon Joseph Smith to terminate plaintiff from her part-time employment at Golightly (complaint, ¶ 21). To plaintiff's way of thinking, there existed no legitimate business, educational, or professional reason for the termination of her employment (complaint, ¶ 22).

In fact, on May 24, 1996, lay-off notices had been sent to administrative/instructional personnel at Golightly School (Exhibit 1 to defendants' brief in support of motion for summary disposition). The lay-off notices followed upon the State of Michigan's elimination of funding for the adult education program. With the loss of funding, employees in primary positions assigned to adult education programs were released due to economic necessity, i.e., "laid off." Additional work assignment employees were released from their part-time positions (Schneider aff, ¶ 10).²

² Beverly Schneider, the Board of Education's executive director of the department of human resource management and planning, explained that plaintiff's primary position was as a counselor at Cass Tech High School (Schneider aff, ¶ 7). In addition, plaintiff received yearly additional work assignments for the evening adult education program (Schneider aff, ¶ 8). Each additional work assignment lasted for one school term, only, and there was no right of reassignment to an additional work assignment (Schneider aff, ¶ 9). Because additional assignments ended at the conclusion of each school year, additional assignment employees were not laid off from temporary or additional assignments, but their assignments merely ended. Consequently, there was no requirement to send lay-off notices to staff members holding additional assignments (Schneider aff, ¶ 12).

William Aldridge, the chief financial officer for DPS, clarified that in June, 1996, the State notified all school districts that funding for adult education programs would be significantly reduced to 32.43% of that of the 1996 fiscal year funding (Aldridge aff, ¶ 3). That resulted in a loss of some 20 million dollars for the DPS (*id*). Thus, in the beginning of the 1996-1997 academic school year, the Detroit Public Schools received only one-third of the funding which it had received for the adult education program in previous years (Aldridge aff, ¶ 5).

Limited funds later became available for the adult education program for 1996 and 1997 (Schneider aff, ¶ 13). As a result, instructional positions were first filled with staff in primary positions. The majority of staff previously employed in additional assignments was not reassigned (*id*).

Along with five or six other individuals, Dr. Arthur Carter, the deputy superintendent for the Board of Education and the supervisor of the Schools' adult education program, determined the process to be utilized in recalling employees once it was determined that the adult education program would be reinstituted (Carter dep, 8/27/98, p 14).³ The recall plan was to make sure that certified teachers and all counselors and administrators were called back (Carter dep, 8/27/98, p 17). Despite those intentions, there was no total recall of persons employed within the adult education program on an additional work assignment basis (Carter dep, 8/27/98, p 51).⁴ Several male and female additional work assignment employees were not rehired (Schneider aff, ¶ 13). Instead, employees were called back based on established parameters determined according to student needs; there were no deviations (*id*). Meetings took place at which employees were advised that persons who had primary positions in the adult education program would be given a preference for available positions (Peoples dep, pp 68-73).

³ Neither Joseph Smith nor Barbara Finch was amongst the individuals with whom Dr. Carter consulted about recalling adult education personnel (Carter dep, 8/27/98, p 14).

⁴ The Detroit Public Schools had an agreement with the labor union that "full-time people would be used to fill any positions on a recall" (Carter dep, 8/27/98, p 49). Thus, preferences were given to employees based on contractual relationships determined by the personnel department, e.g., seniority (Carter dep, 8/27/98, p 21).

Once the primary positions were filled, the personnel office made some additional assignments. Call back of additional work assignment employees was made without regard to any relationship, or lack thereof, between plaintiff, Joseph Smith, and Barbara Finch, and all callbacks were done on a fair and nondiscriminatory basis (Carter dep, 8/27/98, p 21).

B. The Instant Litigation

1. Plaintiff's Allegations

Plaintiff commenced this action with the filing of a multi-count complaint on February 11, 1997. The first four counts of the complaint claimed discrimination. Those were all generally labeled "Elliott-Larsen."⁵

More particularly, plaintiff complained in count I that she was subjected to a hostile work environment solely on the basis of her sex and her prior relationship with Joseph Smith (complaint, ¶25). She claimed to have suffered injuries as a result (complaint, ¶26). In her second cause of action, plaintiff charged that defendants unlawfully discriminated against her in terminating her employment on the basis of her sex and on the incorrect perception that she posed a threat to defendants' personal relationship (complaint, ¶28). Once again, plaintiff conclusorily stated that she suffered injuries as a direct and proximate result (complaint, ¶29). For her third cause of action, plaintiff asserted that she was subjected to disparate treatment solely on the basis of her

⁵ The remaining counts of the complaint were for breach of contract and for intentional infliction of emotional distress.

sex and that no male employee was treated with such hostility and that no male employee suffered a loss of employment because of the developments in defendants' personal lives (complaint, ¶31). Again, plaintiff claimed to have suffered injury as a direct and proximate result of defendants' alleged conduct (complaint, ¶32). For her fourth Elliott-Larsen cause of action, plaintiff urged that she was subjected to unlawful sexual harassment in the treatment she was subjected to prior to and including her discharge from employment and that she was penalized solely because of the misperception that her prior romantic relationship with Smith posed a threat to Smith's present romantic relationship with Finch (complaint, ¶34). As she had done in the earlier counts of her complaint, plaintiff averred that she was injured as a proximate result of defendants' alleged conduct (complaint, ¶35).

2. Defendants' Summary Disposition Motions

On October 26, 1998, defendants brought a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). There, in challenging plaintiff's claimed entitlement to damages, defendants disputed plaintiff's ability to establish a *prima facie* claim for sexual harassment. In making their point, defendants referenced the fact that plaintiff's work assignment ended as part of a massive layoff of all adult education program employees caused by a lack of funding. They also insisted that, solely because of nondiscriminatory decisions by school personnel other than Smith and Finch, plaintiff was not rehired. Under such circumstances, defendants urged that plaintiff could not prove a *prima facie* case for sexual harassment. In making that argument, defendants also maintained that plaintiff failed to come forth with any evidence of comments or

conduct toward her that was in sexual in nature or that substantially interfered with her job performance.

Insisting that she had been discriminated against based upon both her sex and her marital status, plaintiff opposed defendants' summary disposition motion. Doing so, plaintiff claimed that defendants' defense concerning budgetary cutbacks was purely pretextual. While conceding that there was no overall pattern of discrimination toward women, plaintiff nevertheless maintained that she had been discriminated against because of her prior romantic relationship with Joseph Smith. Therefore, plaintiff urged that her treatment and discharge were inextricably intertwined with her gender such that it must be said that she had established a *prima facie* case of sex and marital status discrimination and/or sexual harassment.

On December 4, 1998, the trial court entertained oral arguments on defendants' motion for summary disposition and granted the motion as to plaintiff's claims for discrimination and intentional infliction of emotional distress (trans of 12/04/98, p 6). Consistent with its oral ruling, the trial court signed an order on January 26, 1999, granting partial summary disposition to defendants. The order recited that plaintiff's only remaining claim was count V breach of contract against the Detroit Board of Education and Joseph Smith.

On January 29, 1999, the Board of Education and Joseph Smith filed a second motion for summary disposition. The gist of defendants' motion was that matters, such as the assignment of personnel were expressly covered by the terms of a collective bargaining agreement, and thus plaintiff was bound by the explicit terms of the collective

bargaining agreement and could not seek to enforce under an implied contract theory that which was covered by express agreement. So, too, defendants pointed to the undisputed fact that plaintiff failed to exhaust her remedies under the grievance procedures set forth in the collective bargaining agreement and, therefore, for that additional reason, was precluded from seeking judicial review.

Plaintiff opposed defendants' second motion for summary disposition. On February 5, 1999, the trial court entertained oral arguments on defendants' motion and granted the same. On March 9, 1999, the trial court signed its order granting defendants' second dispositive motion.

3. The Court of Appeals' Decision

Plaintiff timely filed a claim of appeal on March 26, 1999. Doing so, she sought the court of appeals' review of the trial court's summary disposition orders. The court of appeals issued its published opinion on May 15, 2001. There, it affirmed in part and reversed in part the trial court's decision and remanded the matter for further proceedings before the Wayne County Circuit Court.

At the outset of its opinion, the court of appeals expressed the view that plaintiffs' appeal presented an issue of first impression "regarding whether an alleged adverse employment action against an employee on the basis of her former intimate relationship with her supervisor presents a cognizable claim of sex discrimination under the CRA [Civil Rights Act]." Upon so framing the issue, the court of appeals concluded that plaintiff's case presented a cognizable claim of sex discrimination and that, in particular, summary disposition of plaintiff's sexual harassment claim in favor of

defendants was improper. On that point, the court of appeals presumed that plaintiff's pleading was predicated upon a *quid pro quo* sexual harassment theory. That being the situation, the court of appeals explored the various attributes of a *quid pro quo* sexual harassment suit and determined that plaintiff had come forward with sufficient proofs to establish a claim of *quid pro quo* sexual harassment under MCL 37.2103(i)(ii); MSA 3.548(103)(i)(ii):

Plaintiff's allegations that defendants targeted her for persistent and hostile communications and other adverse actions because they disliked her continued presence in the workplace as Smith's former paramour may reasonably be considered allegations of conduct or communication "of a sexual nature," MCL 37.2103(1); MSA 3.548(103)(i), in that they emanated from the romantic/sexual relationship between Smith and plaintiff. Similarly, plaintiff's allegation that she suffered adverse employment actions and was discharged for reasons stemming from her status as Smith's former girlfriend may reasonably be considered an allegation that plaintiff was terminated because of her "submission" to Smith's prior romantic/sexual advances.

The provisions of the Civil Rights Act covering sexual harassment in the workplace should be read to broadly protect an employee against adverse employment action taken by an employer acting in furtherance of personal animosity toward the employee as a result of the employer's sexual advances. Under the circumstances of this case, we conclude that plaintiff has presented a genuine issue of fact concerning whether she was subjected to *quid pro quo* sexual harassment.

Notably, in concluding that plaintiff set forth a cognizable *quid pro quo* sexual harassment theory, the court of appeals declined to follow *Barrett v Kirtland Community College*, 245 Mich App 306 (2001) where a panel of the court of appeals ruled that the

Civil Rights Act does not “prohibit conduct based on romantic jealousy” and, therefore, that no claim of sex discrimination could be made where a male plaintiff alleged that his male supervisor subjected to him adverse employment actions because they were both pursuing a romance with the same female employee.

The court of appeals grounded its ruling regarding plaintiff’s hostile work environment claim on the same facts it had discussed in conjunction with plaintiff’s *quid pro quo* harassment claim. It used the same reasoning it applied in its *quid pro quo* analysis to establish that plaintiff belonged to a protected group, that plaintiff was subjected to communication or conduct on the basis of sex, and that the conduct or communication was unwelcome. From there, it proceeded to conclude that plaintiff’s proofs were sufficient to meet the last two elements of a *prima facie* hostile work environment claim:

With respect to the fourth element of a hostile environment claim, plaintiff presented evidence to create a genuine issue of fact concerning whether the conduct or communication substantially interfered with her employment or created an intimidating, hostile or offensive work environment. ‘[W]hether a hostile work environment existed shall be determined by whether a reasonable person in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff’s employment or having the purpose or effect of creating an intimidating, hostile or offensive employment environment.’ *Radtke, supra* at 394. Plaintiff was subjected to threats, numerous offensive remarks, adverse working conditions, and ultimately replaced as a counselor because of her past relationship with her supervisor.

Finally, plaintiff presented evidence to establish the element of *respondeat superior*. . . .

Defendants timely filed a motion for a rehearing. There, defendants argued that the court of appeals committed palpable error in refusing to take into account the nuances of plaintiff's admittedly atypical sexual discrimination claims; in straining to neatly fit this unusual case into the mold of the commonplace; in failing to account in any way for the competent and substantial documentary evidence accompanying defendants' summary disposition motions; and in refusing to be governed by the holding in *Barrett, supra*, to the effect that actions based on romantic jealousy are not protected by the Civil Rights Act. In addition, defendants criticized the court of appeals' failure to even acknowledge defendants' motion filings which detailed and substantiated defendants' references to the reduction in state funding for adult education, which in turn, caused the Board of Education to make severe budget adjustments, including a systematic layoff of personnel in the Golightly adult education program where plaintiff worked.

Plaintiff did not respond to defendants' rehearing motion. Nevertheless, on July 5, 2001, the court of appeals issued an order denying defendants' rehearing request. Defendants now seek leave to appeal the court of appeals' unfavorable rulings.

INTRODUCTION

Michigan's Civil Rights Act [CRA] is aimed at eliminating the prejudices and biases borne against persons because of their membership in certain protected classes. To that end, the CRA seeks to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases, *Radtke v Everett*, 442 Mich 368 (1993), citing *Miller v C A Muer Corp*, 420 Mich 355, 363 (1984). More particularly, the Act declares in pertinent part that an employer shall not discriminate against an individual with respect to employment, compensation, or a term, condition or privilege of employment because of sex, *Radtke, supra*. With this prohibition in place, plaintiffs are provided the means to combat serious, demeaning, and degrading conduct based on sex in the workplace and to have the opportunity to fairly compete in the marketplace (*id*).

But, the CRA is not so broad as to bar all conduct that is in anyway related to sex, *Barrett v Kirtland Community College, supra*, at p 321. In order to give proper meaning to the CRA, a court is charged with looking to the object of the statute and the harm it is designed to remedy and to apply a reasonable construction that best accomplishes the purpose of the statute, *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644 (1994). When it ruled that the instant plaintiff established sufficient facts to survive a motion for summary disposition under both a *quid pro quo* sexual harassment theory and a hostile work environment theory, the court of appeals unreasonably ignored the recognized limits of the CRA; erroneously elevated conduct and communication following the aftermath of a prior, failed consensual/sexual

relationship between coworkers to protected conduct under the CRA; and essentially rewrote the provisions of MCL 37.2103(i); MSA 3.548(103)(i). Beside being subject to due and proper criticism for the obvious overstepping of its assigned judicial bounds, the court of appeals committed clear error sufficient to warrant this Court's full review of the matter, MCR 7.302(B)(5). That is because the court of appeals' decision conflicts with other appellate decisions defining the proper scope and parameters of the *quid pro quo* and hostile work environment theories. Thus, defendants are entitled to their requested relief in the form of a peremptory reversal of the complained-of portions of the court of appeals' May 15, 2001 opinion or a grant of leave to appeal.

A plaintiff seeking to establish a claim of *quid pro quo* harassment based on the theory that submission to or rejection of the conduct or communication by an individual was used as a factor in decisions affecting his/her employment bears a two-pronged burden of proof. Specifically, that plaintiff must show that (1) he/she was subject to any of the types of unwelcome sexual conduct or communication described in MCL 37.2103(i); MSA 3.548(103)(i) and that (2) the employer or the employer's agent used the plaintiff's submission to or rejection of the proscribed conduct as a factor in a decision affecting the plaintiff's employment. Reading any and all meaning out of the cases articulating and explaining the elements of a plaintiff's burden of proof in that regard, the court of appeals found that the instant plaintiff's allegations that defendants targeted her for persistent and hostile communications and other adverse actions because they disliked her continued presence in the workplace as Smith's former paramour could be considered allegations of conduct or communication of a sexual nature by virtue of the

mere fact that they "emanated from the romantic/sexual relationship" between plaintiff and Smith. Adherence to such an approach robs the phrase "unwelcome sexual conduct or communication" of any and all meaning. It arguably renders as actionable any and all conduct following failed workplace romances and thus opens the floodgates of litigation to disputes predicated on minor disagreements between individuals formerly engaged in romantic relationships. Surely, there is no room in Michigan's statutory civil rights scheme for recognition of causes of action for sexual harassment based on little more than caddy comments and communications exchanged between former lovers who find themselves struggling to continue to work together in the confines of the workplace arena or due to problems flowing the presence in the workplace of the third party responsible for bringing about an end to the earlier romance.

Further compounding its error, the court of appeals ruled that plaintiff met the second element of her *quid pro quo* burden of proof because her allegation that she suffered adverse employment actions and was discharged for reasons stemming from her status as Smith's girlfriend was equivalent to a claim that she was terminated because of her "submission" to Smith's prior romantic/sexual advances. In reaching such result, the court of appeals necessarily disregarded plaintiff's acknowledgement that she and Smith were participants in a consensual intimate/sexual relationship, a fact rendering irrelevant and immaterial notions of "submission" to the romantic/sexual advances of a former partner. Further, in considering the topic of the adverse actions affecting plaintiff's employment, the court of appeals never considered or even mentioned the un rebutted documentary evidence submitted by defendants. That was proffered in support of

defendants' position that plaintiff lost her additional work assignment because, by its very nature, the job lapsed at the end of the school year. Further, because of a lack of funding, the job was not renewed for the upcoming school year. In seeing fit to rule for plaintiff despite defendants' submission of competent, relevant, and undisputed materials in conjunction with defendants' (C)(10) motions, the court of appeals freed plaintiff from the burdens repeatedly imposed on plaintiffs as part of this Court's opinions addressing the operation of MCR 2.116(C)(10).

Observing that the CRA is a remedial statute that is to be liberally construed, the court of appeals sought to bring its analysis and treatment of plaintiff's *quid pro quo* claim under the auspices of that rule. That proved to be to no avail. There is no justification for the broad reading that the court of appeals ascribed to the CRA. The legislature never intended that the CRA furnish a remedy for each and every workplace dispute. Men and women universally work side by side in the workplace. Unfortunately, that causes problems. Yet, some disputes, such as those between former workplace lovers, simply have no remedy in the broad protections afforded by the CRA.

For much the same reasons, the court of appeals erred in its handling of plaintiff's hostile work environment theory. The conduct complained of by plaintiff did not vest plaintiff with a cognizable claim. Plaintiff felt aggrieved by the run-of-the-mill difficulties encountered in continuing to work with her former lover and that lover's new romantic interest. While, no doubt, that proved difficult for plaintiff, such a situation falls far short of meeting the objective test announced by this Court in *Radtke v Everett*, 442 Mich 368 (1993). In the face of the Court's pronouncements in *Radtke*, there is no

way that the court of appeals could have properly concluded that a reasonable person in the totality of circumstances facing plaintiff would have perceived defendants' alleged conduct as substantially interfering with plaintiff's employment or of having the purpose of effect of creating an intimidating, hostile, or offensive employment environment.

With plaintiff unable to make such a showing, the court of appeals should have affirmed the court of appeals' summary disposition rulings. Its failure to do so presents the Court with an instance of clear legal error.

ARGUMENT

PLAINTIFF LACKS A COGNIZABLE CLAIM FOR SEX HARASSMENT.

A. Standard of review.

An appellate court reviews a trial court's grant or denial of summary disposition *de novo*, *Maiden v Rozwood*, 461 Mich 109 (1999); *Groncki v Detroit Edison*, 453 Mich 644, 649 (1996); *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253 (1997); and *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 86 (1994). Doing so, an appellate court must review the record to determine if the movant was entitled to judgment as a matter of law, *Dowell, supra*. Stated otherwise, giving the benefit of doubt to the non-movant, an appellate court is charged with determining whether the movant would have been entitled to judgment as a matter of law, *Lytle v Malady*, 209 Mich App 179, 183 (1995), *aff'd in part and rev'd in part on other gds*, 456 Mich 1 (1997), *op vac'd in part on r'hrng*, 458 Mich 153 (1998). Here, the trial court granted summary disposition under MCR 2.116(C)(8) and (10).

A motion for summary disposition filed pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a plaintiff's complaint, *Celina Mut Ins Co v Aetna Life & Cas Co*, 434 Mich 288, 294 (1990) and *Formall, Inc v Community Nat'l Bank of Pontiac*, 166 Mich App 772, 777 (1988). Such a motion is tested on the pleadings alone, MCR 2.116(G)(2). If, after considering as true the factual allegations of a plaintiff's complaint along with any inferences or conclusions that might fairly be drawn therefrom, a court finds that a plaintiff's claim is so clearly unenforceable as a matter of law that no

factual development could possibly justify a right to recovery, the court properly grants a (C)(8) motion, *DeMare v Woodbridge, 1985, Inc*, 182 Mich App 356 (1990). A court must render summary disposition without delay if the pleadings show that a party is entitled to judgment as a matter of law, *Residential Ratepayer Consortium v Public Service Comm'n*, 168 Mich App 476 (1987).

On the other hand, a motion for summary disposition filed pursuant to MCR 2.116(C)(10) tests the factual support of an opposing party's claims, *Skinner v Square D*, 445 Mich 153, 161 (1994). It is the means of determining whether a claim can be resolved on an issue of law, *Radtke v Everett*, 442 Mich 368, 374 (1993). A party seeking summary disposition based upon the lack of a genuine issue of material fact must identify the issues as to which he/she believes there is no dispute and must support the motion with documentary evidence, *Richardson v Michigan Humane Soc'y*, 221 Mich App 526 (1997). An opposing party has the burden of showing that a genuine issue of disputed fact exists. To accomplish that, the non-movant must present more than conjecture and speculation, *Maiden, supra*, and *Pauley v Hall*, 124 Mich App 255 (1993).

Giving the benefit of doubt to the non-movant, a court must determine whether based on that material, a record might be developed which would leave open an issue upon which reasonable minds could differ. To determine if a genuine issue of material fact exists, the test is whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ. In ruling on a (C)(10) motion, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary

evidence presented. A (C)(10) motion is properly granted if a claim suffers from a deficiency that cannot be overcome, *Atkinson v City of Detroit*, 222 Mich App 7 (1997).

B. Under the Facts and Circumstances Involved Here, Plaintiff Lacks a Cognizable Claim for Sex Harassment

1. Introduction

Before the court of appeals, plaintiff verily conceded that hers is not a “typical” sexual harassment claim brought pursuant to the Elliott-Larsen Civil Rights Act and that the basis for her suit is both “peculiar” and “atypical” (plaintiff’s brief on appeal, p 4). Still, plaintiff submitted that her suit was one properly maintainable under the provisions of Michigan’s Elliott-Larsen Civil Rights Act. Plaintiff is mistaken.

Michigan’s civil rights act is aimed at the prejudices and biases borne against persons because of their membership in a certain class, and it seeks to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases, *Radtko v Everett, supra*, and *Miller v CA Muer Corp*, 420 Mich 355, 363 (1984). In pursuit of that goal, the civil rights act declares that an employer shall not discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of sex or marital status, MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). In that way, the act seeks to combat serious, demeaning, and degrading conduct based on sex in the workplace and to allow women the opportunity to fairly compete in the marketplace, *Radtko, supra*, at p 387. Through the Civil Rights Act, Michigan law recognizes that, in employment, freedom from discrimination because of sex is a civil right, MCL 37.2102; MSA 3.548(102) and *Chambers v Tretco, Inc*, 463

Mich 297, 309 (2000). Employers are thus prohibited from violating this right, MCL 37.2202; MSA 3.548(202).

However, the Civil Rights Act is not so broad as to bar all conduct that is in any way related to sex, *Barbour v Dept of Social Services*, 198 Mich App 183, 185-186 (1993), and *Barrett v Kirtland Community College, supra*. Rather, the *Barrett* court pointed out that the phrase “discrimination because of sex” as used in the Civil Rights Act is limited to instances of gender-based discrimination or instances where the employee is required to submit to sexually-based harassment. The *Barrett* court clarified that such an approach is consistent with the legislature’s non-exhaustive statutory definition of the phrase “discrimination because of sex” and of the term “sex.”

2. Sex Harassment in General

In MCL 37.2103(i); MSA 3.548(103)(i), the Michigan legislature provides a non-exhaustive definition of the phrase “discrimination because of sex.”⁶ There, the legislature defines sex discrimination in a manner so as to include sexual harassment. Notably, in that same statutory provision, the legislature gives meaning to the term “sexual harassment”:

Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:

⁶ In turn, MCL 37.2201(d); MSA 3.548(201)(d) provides a definition of the term “sex.”

- (i) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education or housing.
- (ii) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, public accommodations or public services, education, or housing.
- (iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational or housing environment.

A reading of the provisions of MCL 37.2103(i); MSA 3.548(103)(i) also makes it clear that the statute provides relief for two types of sexual harassment, to wit: *quid pro quo* sexual harassment and sexual harassment which results from a hostile or offensive work environment, *McCalla v Ellis*, 180 Mich App 372, 377 (1989) and *Langlois v McDonald's Restaurants of Michigan, Inc*, 149 Mich App 309, 312-313 (1986). Thus, employers are equally prohibited from engaging in hostile environment sexual harassment and *quid pro quo* sexual harassment, *Chambers, supra*, at p 319. Both of those types of harassment engage a spectrum of misconduct from least to most egregious (*id*).

a. **Quid Pro Quo Sexual Harassment**

The conduct defined in §§103(h)(i)(i) and (ii) is usually referred to as *quid pro quo* sexual harassment, *Radtko, supra*, at fn 16. The typical *quid pro quo* form of sexual harassment occurs where the employer or an employee in a supervisory position encourages or demands sexual favors in return for some employment benefit, *Langlois, supra* at p 313. A party pursuing a claim under this theory must establish two things: (1) that she was subjected to any of the types of unwelcome sexual conduct or communication described in the statute and (2) that her employer or the employer's agent used her submission to or rejection of the proscribed conduct as a factor in a decision affecting the plaintiff's employment, *Champion v Nationwide Security, Inc*, 450 Mich 702, 708-709 (1996) and *Kauffman v Allied Signal, Inc*, 970 F2d 178 (CA 6th 1992). See also, *Chambers, supra* at pp 310-311.

Despite plaintiff's characterization of her claim as one not involving her refusal to accede to the unwanted sexual demands of another, the court of appeals generously, and improperly, read plaintiff's complaint to include a claim for *quid pro quo* harassment. In fact, plaintiff never advanced a *quid pro quo* harassment claim. Plaintiff's complaint included six counts, the first four of which were brought under Michigan's Civil Rights Act. Count I alleged a hostile work environment (complaint, ¶25). Count II generally complained of unwanted sex discrimination by defendants based on the perception that plaintiff posed a threat to their personal relationship (complaint, ¶28). Count III purported to advance a claim for disparate treatment (complaint, ¶31). Count IV averred that plaintiff was subjected to unlawful sexual harassment "in that she

was penalized solely because of the misperception that her prior romantic relationship with defendant Smith posed a threat to said defendant's present romantic relationship with defendant Finch." None of these sufficiently advances a claim for *quid pro quo* sexual harassment and the court of appeals erred in its ruling to the contrary. As in *Radtke, supra*, plaintiff has not alleged that submission to defendant's advances has "made a term or condition . . . to obtain employment" nor has she alleged that defendants utilized such advances "as a factor in decisions affecting" plaintiff's employment. Thus, her *quid pro quo* claim is fatally defective.⁷

So, too, the court of appeals erroneously analyzed the substantive merits, or lack thereof, of plaintiff's *quid pro quo* claim. While the court of appeals duly referenced the two components of an employee's burden of proof in establishing a *prima facie quid pro quo* harassment case, the court offered no real analysis as to whether Ms. Corley first proved that she was subjected to unwelcome sexual advances, request for sexual favors, or verbal and physical conduct or communication of a sexual nature. In fact, the court of

⁷ Moreover, in *Champion, supra*, the court stated that *quid pro quo* harassment occurs only where an individual is in a position to offer tangible job benefits in exchange for sexual favors, or, alternatively, to threaten job injury for a failure to submit. While plaintiff identifies Joseph Smith as her supervisor, she never once asserts or implies that Barbara Finch was of the status that a *quid pro quo* claim for harassment could be maintained against her. Since a decision regarding a tangible employment action is an indispensable element of a *quid pro quo* harassment claim, only persons with supervisory powers could ever effectively make such a decision and Barbara Finch is not such a person. Therefore, at a minimum, the court of appeals should have affirmed the trial court's summary dismissal of plaintiff's *quid pro quo* claim against Barbara Finch.

appeals labeled as the “threshold issue” the question whether submission to or rejection of the proscribed conduct was a factor in decisions affecting Ms. Corley’s employment.

Yet, under the clear and unambiguous language of the Civil Rights Act, in any consideration of a *quid pro quo* sexual harassment claim under MCL 37.2103(i)(ii); MSA 3.548(i)(ii) there must first be either unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct or communication of a sexual nature before a court need take up the issue of whether submission to or rejection of that conduct or communication was used as a factor in decisions affecting the plaintiff’s employment. Thus, defendants respectfully assert that, had the court of appeals engaged in the proper analysis, it would necessarily have concluded that Ms. Corley was unable to meet the threshold element of her burden of proving *quid pro quo* sexual harassment.

Plaintiff was never subjected to any unwelcomed sexual advances by defendants. In fact, plaintiff described her relationship with Joseph Smith as a “consensual romantic/sexual relationship between the plaintiff and her supervisor” (plaintiff-appellant’s brief on appeal, p 4). Likewise, plaintiff never claimed that she was subjected to requests for sexual favors. In fact, on page four of her plaintiff-appellant’s brief on appeal, plaintiff observed that her case was not premised on the harassment of an employee who refused to accede to the unwelcomed sexual demands of another.

At best, the conduct of which Ms. Corley complained amounted to non-gender based actions constituting romantic jealousy. Under such circumstances, the court of appeals was bound to conclude as a matter of law that plaintiff could not establish a

prima facie quid pro quo harassment case. The court of appeals' recent decision in *Barrett v Kirtland Community College, supra*, proves defendants' point.

Barrett was a full-time coordinator under a one-year employment contract with the defendants. His direct supervisor, Cary Vajda asked another employee, Alison Goshorn on a date. Vajda did not know at the time that Goshorn was romantically involved with Barrett. Barrett claimed that the quality of his working relationship with Vajda declined once Vajda discovered the nature of Goshorn's relationship with the plaintiff. Barrett filed three complaints with the civil rights department charging gender discrimination and retaliation. Eventually, Barrett was discharged.

He then brought suit advancing a number of theories. The jury found that the defendants retaliated against Barrett and awarded him damages. In the context of discussing that theory, the *Barrett* court reiterated that the Civil Rights Act prohibits certain proscribed conduct by an employer. At the same time, however, the *Barrett* court declared that an action based on romantic jealousy is not prohibited under the Civil Rights Act.

On that score, the *Barrett* court emphasized that the plaintiff never complained that he was subjected to any physical or verbal conduct of a sexual nature. He never charged that he was treated differently because of his gender. Rather, the evidence demonstrated that he was asserting generic, non-sex based complaints regarding his working conditions. The court made it clear the Civil Rights Act furnished no remedy for such claims:

This Court has held that the CRA is not so broad as to bar all conduct that is in any way related to sex. See *Barbour v Dep't of Social Services*, 198 Mich App 183, 185-186; 497 NW2d 216 (1993) (holding the CRA does not prohibit discrimination based on sexual orientation).

245 Mich App 306, 321. From there, the *Barrett* court set forth the rationale for the rule that actions based on romantic jealousy do not fall within the meaning and intendment of the Civil Rights Act:

Limiting the phrase “discrimination because of sex” as used in the CRA to instances of gender based discrimination or instances where the employee is required to submit to sexually based harassment is consistent with the legislature’s non-exhaustive statutory definitions of that phrase, MCL 37.2103(i); MSA 3.548(103)(i), and the term “sex”, MCL 37.2201(d); MSA 3.548(201)(d). Had our legislature intended the CRA to protect against discrimination based on romantic jealousy, it could have expressly stated that intent within its statutory definitions. The legislature did not so provide.

We do not read the CRA to prohibit conduct based on romantic jealousy. Michigan courts have long held that the CRA is remedial and must be liberally construed to effectuate its ends. (Citations omitted). However, it is also fundamental that a liberal construction of an act must nonetheless be a reasonable construction that best accomplishes its purpose. (Citations omitted). Interpreting the CRA’s prohibition on discrimination based on sex to prohibit conduct based on romantic jealousy turns the CRA on its head. The CRA was enacted to prevent discrimination because of classifications specifically enumerated by the legislature and to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases (citations omitted). It is beyond reason to conclude that plaintiff’s status as the romantic competition to the woman Vajda sought to date places plaintiff within the class of individuals the legislature sought to protect from the prohibited discrimination based on sex under the CRA. . . .

245 Mich App 306, 322. The *Barrett* court’s discussion of the fatal deficiencies in that plaintiff’s sex discrimination suit is especially apropos here:

Plaintiff proceeded to trial on a theory of discrimination based on romantic jealousy. Plaintiff did not claim and the evidence did not establish that plaintiff was required to submit to

sexually-based harassment as a condition of employment. Nor did the evidence presented at trial support a theory of gender based discrimination. Plaintiff established, at most, that Vajda's alleged adverse treatment of plaintiff was based on plaintiff's relationship with Goshorn, not plaintiff's gender. Vajda may have had a romantic purpose in initially pursuing Goshorn and may, as the trial court surmised have intended to eliminate plaintiff so that he could pursue Goshorn's affections. However, Vajda's alleged harassment was not conduct that was proscribed by the CRA since it was not gender based. Indeed, if Vajda's motive was to win the affection of Goshorn, it would not matter if the person Vajda perceived to be standing in his way was male or female As such, it is evident that plaintiff's gender was not the impetus for Vajda's alleged conduct, but rather was merely coincidental to that conduct

245 Mich App 306, 322.

The *Barrett* reasoning applies equally to the instant case. It proves as a matter of law that plaintiff lacks a cognizable *quid pro quo* sexual harassment claim under the facts and circumstances present here. The bottom line in a sexual harassment claim is that a plaintiff must always prove that the conduct at issue was not merely tinged with offensive sexual connotations but actually constituted discrimination because of sex, *Koester v City of Novi*, 458 Mich 1, 15 (1998). Plaintiff can make no such showing.

The court of appeals' treatment of plaintiff's allegations that defendants allegedly targeted plaintiff for persistent and hostile communication because they disliked her continued presence in the workplace as Smith's former paramour as conduct or communication of a sexual nature because it emanated from a romantic/sexual relationship between plaintiff and Smith expands the Civil Rights Act beyond that which was ever contemplated by the Legislature. The conduct complained of by plaintiff, emanating from a consensual romantic/sexual relationship between her and Smith, can

hardly properly be characterized as rendering plaintiff the object of unwelcomed sexual conduct or communication. Instead, the conduct complained of by plaintiff is properly likened to the acts of romantic jealousy which served as the subject of the *Barrett* opinion. A ruling by this Court to that effect, either in the form of a peremptory reversal of the complained-of portions of the court of appeals' May 15, 2001 opinion or a grant of defendants' application for leave to appeal, is in order. Favoritism of one female over another is simply not one of the evils that the CRA was intended to cure, *Hickman v W-S Equipment Co*, 176 Mich App 17 (1989).

Additionally, the Court properly concludes that the court of appeals committed reversible error in finding that plaintiff satisfied her burden of proving that her employer or the employer's agent used plaintiff's submission to or rejection of the proscribed conduct as a factor in a decision affecting plaintiff's employment. As a matter of law, plaintiff failed to make such a showing because the undisputed proofs are that plaintiff's job at Golightly ended because of a lack of funding. For example, Beverly Schneiders' affidavit explained that plaintiff received yearly additional assignments in the evening adult education program (Schneider aff, ¶ 8). Each additional work assignment lasted for one school term only; there was no right of reassignment to an additional work assignment (Schneider aff, ¶ 9). Because additional employee assignments concluded at the end of each school year, additional assignment employees were not laid off from temporary or additional assignments. Rather, their assignments merely ended each year (Schneider aff, ¶ 12).

Through his affidavit, William Aldridge, the chief financial officer for Detroit Public Schools, clarified that in June, 1996, the State notified all school districts that funding for adult education programs was to be significantly reduced (Aldridge aff, ¶ 3). That meant a loss of some \$20 million for the Schools (*id.*) Following upon the loss of state funding, employees were laid off and/or their positions were eliminated in the adult education program (Aldridge aff, ¶ 6). When funds later became available for the adult education program, primary staff positions were filled first, and, as a result, the majority of staff previously employed in additional assignments was not reassigned. (Schneider aff, ¶ 13). There was no 100% recall of persons employed in the adult education program on an additional work assignment basis (Carter dep, 8/27/98, p 51). Several male and female additional work assignment employees were not rehired (Schneider aff, ¶ 13).

Along with five or six other individuals, not including Smith or Finch, Dr. Arthur Carter, the deputy superintendent for the school system and the supervisor of the School's adult education program during plaintiff's employment, determined the process to be utilized in recalling employees once it was determined that the adult education program would be reinstituted (Carter dep, 8/27/98, p 14). A call back of additional work assignment employees was made without regard to any relationship, or lack thereof, between plaintiff, Joseph Smith, and Barbara Finch. All call backs were done on a fair and nondiscriminatory basis (Carter dep, 8/27/98, p 21).

Liability under MCL 37.3103(i)(ii); MSA 3.548(103)(i)(ii) occurs only where the plaintiff's termination is a result of the plaintiff's response to sexual conduct,

Champion v Nationwide Security, supra, p 711. That fact should have proved fatal to the instant plaintiff's right to proceed with her *quid pro quo* sexual harassment theory. In addition, defendants' alleged conduct was in no respects "a decision affecting employment" within the meaning of the Civil Rights Act. Therefore, the Court properly determines that the court of appeals committed reversible error deserving of peremptory reversal or, failing that, a grant of defendants' application for leave to appeal. The undisputed facts prove that the decision to terminate plaintiff's employment at the Golightly adult education program was in no way related to plaintiff's long-since concluded consensual romantic/sexual relationship with Joseph Smith. Stated otherwise, as a matter of law, it must be said that no agent of the Detroit Public Schools used plaintiff's submission to or rejection of unwelcome sexual conduct or communication as a factor in any decision affecting plaintiff's employment. Since plaintiff's submission to or rejection of unwelcome sexual conduct or communication was not factored into any employment decision concerning her, plaintiff lacked a cognizable claim for *quid pro quo* sexual harassment and the court of appeals should have summarily dismissed that claim, *Chambers, supra*, at p 317.

The *sine qua non* of a *quid pro quo* harassment claim is a decision affecting plaintiff's employment. The court of appeals' contrary decision, one in direct conflict with this Court's *Chambers* opinion, represents the court of appeals' commission of clear error. In its May 15, 2001 opinion, the court of appeals simply disregarded the need for a causal connection between a plaintiff's submission to or rejection of the proscribed conduct and the alleged act adverse employment action taken against the plaintiff, the

court of appeals apparently being satisfied with the instant plaintiff's averment that her employment at Golightly was terminated, no matter for what reason. Therefore, the Court properly peremptorily reverses the court of appeals' complained-of rulings or grants defendants' application for leave to appeal.

The court of appeals' treatment of plaintiff's *quid pro quo* theory stretches the same almost beyond recognition to the point of judicial legislation. Notwithstanding its recognition of the elements of a cognizable claim under MCL 37.2103(i)(ii); MSA 3.548(103)(i)(ii), the court of appeals found, without explanation, that plaintiff's mere allegations that defendants targeted her for persistent and hostile communication because they disliked her continued presence in the workplace as Smith's former paramour could reasonably be considered allegations of conduct or communication of a sexual nature because they "emanated from a romantic/sexual relationship" between Smith and plaintiff. In an equally over-generous and improper analysis of the second prong of plaintiff's burden of proof, the court of appeals held that plaintiff's allegation that she suffered adverse employment action and was discharged for reasons stemming from her status as Smith's former girlfriend could reasonably be considered a claim that plaintiff was terminated because of her submission to Smith's prior romantic/sexual advances. These conclusions by the court of appeals deprive MCL 37.2103(i); MSA 3.548(103)(i) of all meaning. For reasons never explained by it, the court of appeals has seen fit to abandon clear statutory language and to allow plaintiff who was engaged in a consensual former intimate relationship with her employer to be vested with a cognizable claim of sex discrimination under the most tenuous of facts and theories.

Participants in broken romantic relationships will now have *carte blanche* opportunity to pursue sex discrimination claims against former lovers. Per the court of appeals' decision, they will be able to ground such suits on the verbal exchanges and conduct between participants in failed relationships. Indeed, the court of appeals read the Civil Rights Act as "broadly protect[ing]" an employee against alleged adverse employment action taken by an employer. However, for the court of appeals to suggest that the broad protections of the Civil Rights Act are justifiably involved here is untenable.

The Civil Rights Act is not so broad as to bar all conduct that is in any way related to sex. There must and should be some limitation to the phrase "discrimination because of sex" as used in the Civil Rights Act. Borrowing from the reasoning of the *Barrett* court, had the Michigan legislature intended the Civil Rights Act to protect against alleged discrimination based upon failed romantic relationships between co-workers, it could have expressly stated that intent within its statutory definitions. However, the Legislature never so provided. Further, paraphrasing from *Barrett*, interpreting the Civil Rights Act's prohibition of discrimination based on sex to proscribe conduct allegedly based upon romantic jealousy and/or failed romantic relationships between coworkers is to turn the Civil Rights Act "on its head."

No proper predicate exists for the court of appeals' reading of the record as one involving an employer acting in furtherance of personal animosity toward the employee as the result of the employer's sexual advances. From plaintiff's own description of her relationship, she and Smith enjoyed a consensual sexual/romantic

relationship. To place their relationship in the category of those embraced with the prohibition against *quid pro quo* sexual harassment borders on the ridiculous.

For the court of appeals to characterize the situation between plaintiff and Joseph Smith as one where Smith acted in “furtherance of personal animosity toward the employee as a result of the employer’s sexual advances” is for the court of appeals to overlook plaintiff’s acknowledgement of her relationship with Smith as a consensual sexual/romantic relationship. In its opinion, the court of appeals has succeeded in contorting that relationship. Only in that fashion is the court of appeals able to conclude that plaintiff presented a genuine issue of material fact concerning whether she was subjected to *quid pro quo* sexual harassment.

b. Hostile Work Environment Sexual Harassment

The court of appeals compounded its error when it ruled that plaintiff set forth a cognizable sex harassment claim based on a hostile work environment. Five elements comprise a *prima facie* hostile work environment claim, *Radtke, supra*, at p 382 and *Quinto v Cross & Peters*, 451 Mich 358 (1996). They are as follows: (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of sex; (3) the employee was subjected to unwelcome sexual conduct or communication; (4) the unwelcome sexual conduct or communication was intended to or did in fact substantially interfere with the employee’s employment or create an intimidating, hostile, or offensive work environment; and (5) *respondeat superior*.

Because she is a member of a protected class, Patricia Corley meets the first element of a *prima facie* case for sexual harassment based on a hostile work environment. A plaintiff may establish the first element merely by being an employee, *Radtke, supra*. According to that case, all employees are inherently members of a protected class in a hostile work environment case because all persons may be discriminated against on the basis of sex.

In order to meet the second element of a *prima facie* hostile environment claim, a plaintiff must show that, but for the fact of her sex, she would not have been the object of harassment. The *Radtke* plaintiff easily sustained such a showing. She alleged that the defendant forcefully held her down, caressed her, and attempted to kiss her. Thus, the court found that the overtures at issue were certainly inferentially sexually motivated and that, but for the plaintiff's womanhood, the defendant would not have held the plaintiff down and attempted to solicit romance, if not sex, with her. That being the case, the plaintiff's allegations were deemed sufficient to meet the minimum *prima facie* showing necessary to establish that the conduct was based on sex.

By contrast, the plaintiff in *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335 (1993) was unable to sustain her burden of proving that the complained-of harassment was based upon her gender. The cartoon at issue was not gender oriented. It depicted both the plaintiff and a male co-worker engaged in a sexual act and, therefore, was viewed as being gender-neutral. The cartoon was equally offensive to both male and female employees and thus could not properly serve as the predicate of a suit for sexual harassment.

In the more recent *Barrett* case, the court rejected that plaintiff's insistence that his supervisor's treatment was based upon the plaintiff's gender. As the court of appeals aptly observed, it mattered not whether the person that the supervisor perceived to be standing in his way was male or female. As such, the *Barrett* court was bound to conclude that the plaintiff's gender was not the impetus for the defendant supervisor's alleged conduct but was merely coincidental to that conduct.

So, too, Patricia Corley cannot prove a *prima facie* claim of hostile work environment sexual harassment because she has never alleged and cannot prove that she was subjected to any unwelcome sexual advances. Further, plaintiff lacked any evidence that any comments allegedly made to her were sexual in nature. Instead, she merely complained that Smith instructed her that she should not express her feelings about the cessation of their relationship, that Barbara Finch talked about her engagement to Joseph Smith in front of plaintiff, and that plaintiff was instructed not to sit at the secretary's desk.

Standing in marked contrast to the charges made in *Radtke, supra*, are the allegations advanced by the instant plaintiff. At best, plaintiff complains of a "demoralizing, humiliating and unnecessary reassignment of her work station" (plaintiff's brief on appeal, p 5); that defendant Finch "conduct[ed] catty conversations about her relationship with Smith in the plaintiff's presence" (plaintiff's brief on appeal, p 5); of Smith's alleged threats to plaintiff of loss of her job (plaintiff's brief on appeal, p 5); and of her ultimate termination allegedly for reasons wholly unrelated to her job performance. Even accepting plaintiff's allegations as true for purposes of this argument, only,

defendants' alleged conduct toward plaintiff was not sexually motivated. Defendants could have just as easily displayed such conduct toward a male employee.

The third element of a *prima facie* case renders it incumbent upon a plaintiff to prove that the complained-of conduct or communication was unwelcome. On that score, defendants merely note that plaintiff never complained about defendants' alleged conduct. Thus, plaintiff failed to raise a genuine issue of material fact showing that defendants' alleged conduct was unwelcome.

The fourth element that a plaintiff must establish in a hostile work environment sexual harassment claim is that the unwelcome conduct or communication was intended to or did in fact substantially interfere with the employee's employment or create an intimidating, hostile, or offensive work environment. Whether the alleged unwelcome conduct or communication created a hostile work environment is to be determined by whether a reasonable person in the totality of circumstances would have perceived the conduct as substantially interfering with the plaintiff's employment or had the purpose or effect of creating an intimidating, hostile, or offensive employment environment, *Radtke, supra*, at p 388.

In *Rabidue v Osceola Refining Co, a Division of Texas American Petro Chemicals, Inc, supra*, the plaintiff advanced a sexual harassment claim. She based her suit upon a combination of vulgar language by a supervisor and certain posters in the work environment. That court refused to find that the language or the posters had the purpose or effect of creating an intimidating, hostile, or offensive employment environment. While the posters and the vulgar language were annoying, they did not rise

to the level of substantially interfering with plaintiff's job. As a result, the plaintiff failed to meet her burden of proving a viable claim for sex harassment under the civil rights act.

The court in *Quinto v Cross & Peters Co, supra*, at p 369, instructed that, in order to survive a summary disposition, a plaintiff must present documentary evidence of a genuine issue of material fact regarding whether a reasonable person would find that, in the totality of the circumstances, the defendants' complained-of behavior toward the plaintiff was sufficiently severe or pervasive to create a hostile work environment.

Considering the fact that the *Quinto* plaintiff was only able to muster conclusory allegations in response to the defendant's summary disposition motion, the court readily affirmed the trial court's ruling in favor of the defendant:

In conclusion, we hold that once defendant supports its motion for summary disposition under MCR 2.116(C)(10) with documentary evidence, plaintiff, as the opposing party, had the duty to rebut with documentary evidence defendant's contention that no genuine issue of material fact existed. Plaintiff's affidavit did not satisfy her burden as the opposing party; rather, it constituted mere conclusory allegations and was devoid of detail that would permit the conclusion that there was such conduct or communication of a type or severity that a reasonable person could find that a hostile work environment existed. The court of appeals properly affirmed the trial court's grant of summary disposition in favor of defendant.

451 Mich 358, 371-372.

See also, McCallum v Dep't of Corrections, 197 Mich App 589 (1992).

That court also found that the plaintiff had not stated sufficient facts to support a cause of action for hostile environment sexual harassment. That record was devoid of any complaint of inmate sexual harassment or sexual harassment by corrections staff other than one single individual. Further, there was nothing in the record that showed that the

decedent ever felt that her work performance was substantially and adversely affected by an inmate-created hostile environment.

A like result is warranted here. Plaintiff failed to show that defendants' alleged conduct was so severe or pervasive that a reasonable person would have perceived the conduct at issue to substantially interfere with his or her employment or to have the purpose or effect of creating an intimidating, hostile, or offensive employment environment. As pointed out by the court in *Langlois v McDonald's Restaurants of Michigan, supra*, at p 313, the mere fact that sexual harassment may occur does not justify recovery under a hostile work environment claim. That is because the severity of the harassment is critical. Absent such a showing, recovery under a hostile work environment discrimination claim is not allowed.

Utilization of an objective standard prevents "hypersensitive plaintiffs" from recovering, *Radtke, supra*, at p 388. It is defendants' position that the court of appeals' conclusion in this case finding that plaintiff produced sufficient proofs to withstand a motion for summary disposition on the fourth element of her claim for hostile work environment runs counter to this Court's determination in *Radtke, supra*, that the question of whether a hostile work environment exists should be determined by an objective reasonableness standard and not by the subjective perceptions of a plaintiff, *Radtke, supra*, at p 388. In short, the question of whether a hostile work environment exists is to be determined by whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating and intimidating,

hostile, or offensive employment environment. No such determination is properly made under the facts and circumstances of the instant case.

RELIEF

WHEREFORE, defendants-appellants Detroit Board of Education, Joseph Smith, and Barbara Finch respectfully request that the Court peremptorily reverse the complained-of portions of the court of appeals' May 15, 2001 published opinion and, failing that, grant defendants' application for leave to appeal.

Respectfully submitted,

PLUNKETT & COONEY, P.C.

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DATED: July 25, 2001

Christine D. Oldani
CHRISTINE D. OLDANI

(ON APPEAL FROM THE COURT OF APPEALS)

V

Defendants-Appellants.

Clerk of the Court
Wayne County Circuit Court
201 City County Building
Detroit, MI 48226

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the
United States Mail.

Christine D. Oldani
CHRISTINE D. OLDANI

Subscribed and sworn to before me
this 25th day of July, 2001

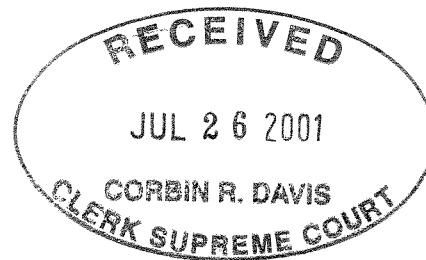
Ken MJD
Notary Public, Oakland County, M
Acting in Wayne Cty., MI
My Commission Expires: 12/08/05

Detroit.07911.90104.764539-1

July 25, 2001

VIA OVERNIGHT MAIL

Clerk of the Court
Michigan Supreme Court
525 W. Ottawa, 2nd Flr.
Lansing, MI 48933



Re: Corley v Detroit Board of Education, et al
Court of Appeals No. 218528
Our File: 07911.90104

Dear Clerk:

Enclosed for filing with the Court, please find an original and eight (8) copies of the Notice of Hearing, Application for Leave to Appeal (with \$250 filing fee), Affidavit of Christine D. Oldani, and Proof of Service in the above-referenced case.

Thank you for your attention to this matter.

Very truly yours,

Christine D. Oldani

Christine D. Oldani
Direct Dial: (313) 983-4796

CDO/rym

Enclosure

c: Ernest Jarrett, Esq. (w/enc)
Wayne County Circuit Court (w/enc)
Michigan Court of Appeals (w/enc)

Detroit.07911.90104.765126-1